

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Sanovo Engineering USA, Inc.,

Plaintiff,

Case No. 20-10818

v.

Judith E. Levy
United States District Judge

Shimon Tavdidishvili et al.,

Defendants.

Mag. Judge Elizabeth A.
Stafford

_____/

**ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT AS TO ALL DEFENDANTS [11]**

Before the Court is Plaintiff Sanovo Engineering USA, Inc.'s motion for default judgment as to Defendants Shimon Tavdidishvili and DDS Conveyor, Inc. (ECF No. 11.) For the reasons set forth below, Plaintiff's motion for default judgment is denied without prejudice.

Plaintiff filed a complaint against Defendants on March 30, 2020, seeking confirmation of the arbitration award following the parties' participation in a February 12, 2020 arbitration hearing as well as entry of judgment. (ECF No. 1.) Defendants were served on July 6, 2020. (ECF Nos. 4, 5.) Plaintiff filed a request for the Clerk of Court's entry of default

on August 13, 2020. (ECF No. 6.) The Clerk of Court entered defaults against all Defendants for failure to plead or otherwise defend on August 14, 2020. (ECF Nos. 7, 8.) Plaintiff submitted a certificate of service by first class mail of a copy of the Clerk's entry of default on both Defendants on August 17, 2020. (ECF Nos. 9, 10.)

Plaintiff filed this motion for default judgment on September 18, 2020. (ECF No. 11.) On November 5, 2020, a hearing was held by video conference and oral argument was heard regarding Plaintiff's motion for default judgment. (ECF No. 13.) At the hearing, the Court found that Plaintiff's complaint upon which the motion for default judgment was based contained insufficient allegations to demonstrate the Court had subject matter jurisdiction as pleaded. The Court permitted Plaintiff to file an amended complaint, which Plaintiff subsequently filed on November 11, 2020. (ECF No. 14.)

Because Defendants have never made an appearance, and Plaintiff's first amended complaint does not assert a new claim for relief against either Defendant, Plaintiff is not required to serve Defendants with the first amended complaint. Fed. R. Civ. P. 5(a)(2); *see Lucas v. DeSilva Auto. Servs.*, No. 1: 16-CV-790-MRB-SKB, 2018 WL 1558866, at

*4 (S.D. Ohio Mar. 31, 2018). Plaintiff's first amended complaint became operative upon filing. However, because the Clerk's prior entry of default as to Defendants was issued on the basis of the original, now inoperative complaint, the Court cannot enter default judgment against Defendants unless Plaintiff moves for default based on the first amended complaint. See *Bituminous Cas. Corp. v. Tindle Enterprises, Inc.*, No. 07-1158 B, 2009 WL 2843375, at *4 (W.D. Tenn. Aug. 31, 2009) ("A motion for default judgment based on an entry of default on an earlier complaint becomes moot once the amended complaint is filed."). Accordingly, Plaintiff's motion for default judgment is denied without prejudice to seek entry of default and move for default judgment based on the operative pleading.

For the reasons set forth above, the Court DENIES Plaintiff's motion for default judgment without prejudice.

IT IS SO ORDERED.

Dated: January 25, 2021
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on January 25, 2021.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager